

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODOLFO ROMAN-CHEN,

Defendant.

4:12CR3134

TENTATIVE FINDINGS

This case is set for expedited sentencing and no presentence investigation report was requested by the parties or the Court. However, the parties have stipulated that the defendant's criminal history category is I. *See*, filing 6 at 2; filing 15 at 1. The probation office also confirmed this through an updated criminal records check performed on this date. There are no objections or motions for departure or variance.

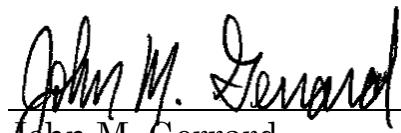
IT IS ORDERED:

1. The Court will consult and follow the Federal Sentencing Guidelines to the extent permitted and required by *United States v. Booker*, 543 U.S. 220 (2005) and subsequent cases. In this regard, the Court gives notice that, unless otherwise ordered, it will:
 - (a) give the advisory Guidelines such weight as they deserve within the context of each individual case and will filter the Guidelines' advice through the 18 U.S.C. § 3553(a) factors, but will not afford the Guidelines any particular or "substantial" weight;
 - (b) resolve all factual disputes relevant to sentencing by the greater weight of the evidence and without the aid of a jury;
 - (c) impose upon the United States the burden of proof on all Guidelines enhancements;
 - (d) impose upon the defendant the burden of proof on all Guidelines mitigators;
 - (e) depart from the advisory Guidelines, if appropriate, using pre-*Booker* departure theory; and

- (f) in cases where a departure using pre-*Booker* departure theory is not warranted, deviate or vary from the Guidelines when there is a principled reason justifying a sentence different than that called for by application of the advisory Guidelines, again without affording the Guidelines any particular or “substantial” weight.
2. There are no objections or motions that require resolution at sentencing.
 3. Except to the extent, if any, that I have sustained an objection, granted a motion, or reserved an issue for later resolution in the preceding paragraph, the parties are notified that my tentative findings are that the criminal history category stipulated to by the parties is correct.
 4. If any party wishes to challenge these tentative findings, that party shall, as soon as possible (but in any event no later than two (2) business days before sentencing) file with the Court and serve upon opposing counsel an objection challenging these tentative findings, supported by a brief as to the law and such evidentiary materials as are required, giving due regard to the local rules of practice governing the submission of evidentiary materials. If an evidentiary hearing is requested, such filings should include a statement describing why a hearing is necessary and how long such a hearing would take.
 5. Absent timely submission of the information required by the preceding paragraph, the Court’s tentative findings may become final.
 6. Unless otherwise ordered, any objection challenging these tentative findings shall be resolved at sentencing.

Dated this 3rd day of January, 2013.

BY THE COURT:



John M. Gerrard
United States District Judge